



Proposed Regulation Agency Background Document

Agency name	Board of Medicine, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC85-40-10 et seq.
Regulation title	Regulations Governing the Practice of Respiratory Care
Action title	Periodic review recommendations
Document preparation date	8/23/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

The proposed regulation was adopted to clarify the requirements for evidence of competency to return to active practice for applicants for reactivation of an inactive license or reinstatement of a lapsed license. The only substantive changes recommended is an alternative for evidence of continued competency that would be available to an applicant seeking to return to active practice.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

§ 54.1-2400 -General powers and duties of health regulatory boards

The general powers and duties of health regulatory boards shall be:

...

6. *To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.) of this title. ...*

In addition, the Medical Practice Act requires the Board to establish requirements for the licensure of respiratory care practitioners:

§ 54.1-2954.1. Powers of Board concerning respiratory care.

The Board shall take such actions as may be necessary to ensure the competence and integrity of any person who claims to be a respiratory care practitioner or who holds himself out to the public as a respiratory care practitioner or who engages in the practice of respiratory care and to that end the Board shall license persons as respiratory care practitioners. The provisions hereof shall not prevent or prohibit other persons licensed pursuant to this chapter from continuing to practice respiratory care when such practice is in accordance with regulations promulgated by the Board.

The Board shall establish requirements for the supervised, structured education of respiratory care practitioners, including preclinical, didactic and laboratory, and clinical activities, and an examination to evaluate competency. All such training programs shall be approved by the Board.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of the proposed action is to clarify certain provisions of regulation for ease of compliance and consistency with current practices. The Board has amended rules for reactivation or reinstatement of inactive or lapsed licenses to provide requirements that will reasonably ensure competency for active practice to protect the health and safety of patients who will receive respiratory care from such practitioners.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

The proposed change is to clarify the requirements for a person seeking reactivation from inactive status and reinstatement for a person who has allowed his license to lapse. Currently, such a person has to indicate that he has actively practiced in another jurisdiction while his license was lapsed or inactive in Virginia or provide other evidence of competency, which may be problematic since it was interpreted to mean that the applicant had to perform an internship or traineeship at a practice site in Virginia. The amended rule would specify that the evidence of competency may be hours of continuing education in respiratory care. It would also provide an additional alternative to indicate competency to return to active practice. If a respiratory care practitioner has chosen to be recertified by passage of an examination by the National Board for Respiratory Care (the certifying body that provides the licensing examination), the Board would find that to be ample evidence of current competency.

Finally, an amendment would add a provision stating that the board has the right to deny reactivation or reinstatement based on grounds that would be a violation of law or regulation. While the law currently grants such authority, the Board determined that a statement in the regulation would be clarifying to potential applicants.

Issues

Please identify the issues associated with the proposed regulatory action, including:
 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;
 2) the primary advantages and disadvantages to the agency or the Commonwealth; and
 3) other pertinent matters of interest to the regulated community, government officials, and the public.

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

- 1) The primary advantage to the public would be to potentially increase the accessibility of respiratory care practitioners who want to return to active practice in Virginia by clarifying the requirements. An interpretation of the current rule to require an internship or traineeship if someone has not been practicing in another jurisdiction has created a hardship on a few persons who were unable to find a situation in which that requirement could be met. Obtaining the necessary continuing education hours as an alternative to active practice is a more reasonable requirement that will not present a barrier to reentry or relocation.
- 2) There are no advantages or disadvantages to the agency or the Commonwealth.
- 3) There are no other matters of interest.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

Projected cost to the state to implement and enforce the proposed regulation, including	a) As a special fund agency, the Board must generate sufficient revenue to cover its expenditures from
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<p>(a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>non-general funds, specifically the renewal and application fees it charges to practitioners for necessary functions of regulation; b) The agency will incur some one-time costs (less than \$1,000) for mailings to the Public Participation Guidelines mailing lists, conducting a public hearing, and sending notice of final regulations to regulated entities. Since most mailings to the PPG list are handled electronically, there is very little cost involved. Every effort will be made to incorporate those into anticipated mailings and Board meetings already scheduled. There are no on-going expenditures related to these amendments.</p>
<p>Projected cost of the regulation on localities</p>	<p>None</p>
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The entities that are likely to be affected by these regulations would be persons who wish to reactivate an inactive license or reinstate a lapsed license in respiratory care.</p>
<p>Agency’s best estimate of the number of such entities that will be affected. Please include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.</p>	<p>There is no estimate of the number of entities that will be affected since there is no prediction of the number who will seek reactivation or reinstatement. Typically, there are fewer than 20 per year. There is no impact on small businesses.</p>
<p>All projected costs of the regulation for affected individuals, businesses, or other entities. Please be specific. Be sure to include the projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses.</p>	<p>There are no projected costs of regulation; it is a clarification of current requirements.</p>

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

The primary purpose of the periodic review was to look at requirements that ensure continued competency, both for renewal of active licenses and for reactivation or reinstatement. In its review of requirements for licensure, the regulatory committee of respiratory care practitioners expressed concern that persons who had not maintained certification by the National Board for Respiratory Care could continue to renew their Virginia licenses. All practitioners are awarded a credential of CRT (Certified Respiratory Therapist) or RRT (Registered Respiratory Therapist) after passage of the NBRC examination required for licensure in Virginia. While many respiratory care practitioners maintain that credential with NBRC, it is not required to renew one’s license. As the organization that sets and maintains standards for the practice of respiratory, membership in NBRC is a measure of one’s individual professional commitment but it does not supersede the current measures for continued competency set in Board regulations.

Continuing education is required for renewal of an NBRC credential, but it is also required for renewal of a respiratory license in Virginia. Since the committee could not identify a value to requiring maintenance of the NBRC in terms of public protection, it was not recommended.

The current interpretation of section 61, which sets the requirements for reactivation of an inactive license, has created a dilemma for several persons. The rule says that you must submit information on continued practice in another jurisdiction or other evidence of competency to return to active practice to include 10 hours of CE for each year of inactivity. The Board currently requires some evidence of competency in addition to the hours of CE; for someone who has not held an active license and has been out of practice, that “evidence of competency” is difficult, if not impossible, to produce. The Board recommends a clarification that states the continuing education is one of the options for reactivation or reinstatement *in addition to* practice in another jurisdiction.

Finally, the Board considered some additional evidence of competency for those practitioners who have been inactive or lapsed (and not actively practicing in another jurisdiction) for more than five years. The NBRC offers a re-credentialing examination that many of its members take voluntarily as evidence of continued competency. That examination may provide the additional evidence that is necessary to ensure the public that practitioners returning to practice after a length period are safe to resume treating patients. While that was added as an option for demonstrating current competency, the Board chose not to specify it as a requirement. To reinstate a lapsed license, the regulation currently provides that the Board may specify additional requirements for reinstatement of a lapsed license – including a requirement for reexamination. If a practitioner has not actively practiced respiratory care for an extended period of time and there was concern about the level of current knowledge and skill, the applicant would likely be referred to a Credentials Committee, where a decision could be made on the need for a recertification examination.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

The Notice of Intended Regulatory Action was published in the Register on June 26, 2006 and sent to the Public Participation Guidelines list with comment requested until July 26, 2006. There were no comments on the Notice.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no potential impact of the proposed regulatory action on the institution of the family and family stability.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

Current section number	Proposed new section number	Current requirement	Proposed change and rationale
61	n/a	Sets rules for obtaining an inactive license and requirements for reactivation	In the proposed action, the requirements for reactivation are deleted and restated in section 65
65	n/a	Sets rules for reinstatement of a lapsed license	<p>Subsection A: Since the requirements for evidence of competency to return to active practice were similar for <i>reactivation or reinstatement</i>, they have been combined and clarified in one subsection.</p> <p>Under current rules, there was confusion about the wording of the competency requirements for reactivation with some interpreting the rule to be more restrictive than for reinstatement of a lapsed license. For clarity and simplicity, the two were combined, which will allow an inactive or lapsed practitioner three options by which he can demonstrate competency to return to practice in Virginia. The amended rule will allow a person who has allowed his Virginia license to lapse but has been actively practicing in another state to use that practice as evidence of competency, which is not provided in current regulation.</p> <p>In addition, there will be a third option for demonstrating competency – recertification by passage of an examination from NBRC. The Board considered requiring recertification for persons lapsed or inactive for more than 5 years. While it decided not to adopt that more stringent requirement, a practitioner who voluntarily chooses to recertify would be able to use that as evidence of competency to return to active practice.</p> <p>Subsection B: The fee required for reactivation is a restatement of the current requirement from section 61 B.</p> <p>Subsection E. To ensure that the applicant understands the Board’s authority to deny relicensure</p>

			if evidence is found indicating a violation of law or regulation, subsection E was added with reference to the provisions in § 54.1-2915 of the Code.
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